



Martha S. Hogerty
Public Counsel

State of Missouri

Mel Carnahan
Governor

Office of the Public Counsel
Governor's Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: <http://www.mo-opc.org>
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

August 23, 2000

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²
AUG 23 2000
Missouri Public
Service Commission

RE: UtiliCorp United Inc. and Empire District Electric Company
Case No. EM-2000-369

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Public Counsel's Statement of Position**. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

AUG 23 2000

Missouri Public
Service Commission

In the matter of the Joint Application of)
UtiliCorp United Inc. and The Empire)
District Electric Company for authority to)
merge The Empire District Electric)
Company with and into UtiliCorp United)
Inc. and, in connection therewith, certain)
other related transactions.

Case No. EM-2000-369

PUBLIC COUNSEL'S STATEMENT OF POSITION

COMES NOW the Office of the Public Counsel (Public Counsel) and for its **Statement of Position** states as follows:

I. Does the proposed merger and related transactions and proposals satisfy the not detrimental to the public interest standard required for the approval of mergers by the Commission?

No. Furthermore, Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to approve the Companies' proposed regulatory plan.

Merger Costs/Benefits

- (1) Under reasonable assumptions, do estimated merger savings exceed estimated merger costs?

No. Public Counsel supports the position of the Staff. Moreover, Public Counsel believes Joint Applicants should be required to file a rate case proceeding so a proper determination can be made of the alleged merger saving and merger costs.

- (2) If under reasonable merger assumptions, estimated merger savings do not exceed estimated merger costs should the merger be approved as being not detrimental to the public interest?

No. Public Counsel supports the position of the Staff.

Regulatory Plan - Overall:

- (1) Should the Companies' proposed regulatory plan for treating merger related savings and costs in rates be adopted in total as not detrimental to the public interest?

No. Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to adopt the Companies' proposed regulatory plan for treating merger related savings and costs in rates.

Assuming arguendo that the Commission believes it possesses such statutory authority, the Commission should reject from a regulatory policy stand-point the Companies' proposed regulatory plan for treating merger costs and savings because it is an extraordinary rate making device that would harm customers while allowing the merged company to receive undeserved windfalls.

- (2) Should The Empire Electric District Company (EDE) be placed under a rate "moratorium" for five years following the "pre-moratorium rate proceeding"?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to adopt Companies' proposed "rate moratorium." Assuming arguendo the Commission believes it possesses such statutory authority, from a regulatory policy stand-point the Commission should reject Companies proposed "rate moratorium" because such moratorium would be wholly contrary to traditional rate of return regulation and result in setting rates that are unjust and unreasonable.

Burdette Rebuttal, pp. 11-28.
Robertson Rebuttal, pp. 2-98.
Kind Rebuttal, pp. 24-62.
Trippensee Rebuttal, pp. 4-18.

Acquisition Adjustment:

- (1) Should the amortization of one-half of the acquisition adjustment and the return on the unamortized portion of one-half of the acquisition adjustment be treated above-the-line for rate purposes in Years 6-10 following the pre-moratorium rate proceeding as the Companies propose?

Public Counsel does not believe that the Commission possesses the statutory authority in merger proceeding pursuant to §393.190 to adopt Companies' proposed treatment of the acquisition adjustment resulting from this proceeding. However, the Commission should reaffirm its policy of not allowing any rate recovery of acquisition premiums. Assuming arguendo the Commission believes it possesses such statutory authority, from a regulatory policy standpoint the Commission should reject Companies proposal regarding recovery of the acquisition adjustment and related costs.

- (2) Should the amortization of the acquisition adjustment begin at the closing of the merger between EDE and UtiliCorp United Inc. (UCU)?

Assuming the Commission determines the proposed merger is not detrimental to the public interest, the financial books and records of the Company should include the amortization of the acquisition premium beginning at the closing of the merger.

- (3) Should any portion of the acquisition adjustment ever be included in rates for (a) "recovery of" the acquisition adjustment (amortization of the acquisition adjustment) and (b) "return on" the acquisition adjustment (rate base component of the unamortized balance of the acquisition adjustment)?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to adopt Companies' proposal to include a portion of the acquisition adjustment in rates for (a) "recovery of" the acquisition adjustment and (b) "return on" the acquisition adjustment. Assuming arguendo the Commission believes it possesses such statutory authority, from a regulatory policy standpoint the Commission should reject Companies' proposal regarding recovery of a portion of the acquisition adjustment.

Burdette Rebuttal, pp. 15-28.
Robertson Rebuttal pp. 6-47.

Estimated Merger Savings:

- (1) Should the Companies' estimate of merger savings and merger costs be relied upon by the Commission in its findings regarding the Merger Application?

The Companies' estimate of merger savings and costs should not be relied upon due to the fact that these costs are for the most part based upon estimates and upon unrealized events, including baselines for the cost savings calculations that are based upon the 1999 budgets. Public Counsel believes that these budgets do not represent the actual regulatory operations of the companies, thus they should not be relied upon. In addition, the Companies' estimates should not be relied upon because they exclude synergies and revenue enhancements related to non-regulated operations.

- (2) Does the Companies' estimate of generation/joint dispatch savings reflect only impacts directly attributable to the merger?

Public Counsel takes no position on this issue.

- (3) Does the Companies' estimate of merger savings reflect the expected operation of the UCU and EDE pension plans following closing of the merger?

Public Counsel takes no position on this issue.

Robertson Rebuttal, pp. 60-93.
Kind Rebuttal, pp. 24-62.

Savings Tracking/Benchmark

- (1) Should the Companies' proposal for utilizing a savings tracking system for identifying and quantifying merger related savings in Years 6-10, after the pre-moratorium rate proceeding, be adopted?

No. Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to order ratemaking treatment for merger related savings. Moreover, the Commission should reaffirm its policy of not allowing any acquisition adjustment in the development of rates.

- (2) If the Commission finds that establishing a merger savings tracking system is necessary, should this tracking system be in place for Years 1-5, as well as for Years 6-10, after the pre-moratorium rate proceeding?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to adopt any rate making decisions. However, a merger savings tracking system, that is agreeable to all parties could be ordered.

- (3) Should the Companies' proposal for establishing a guaranteed merger revenue requirement benefit to EDE customers of at least \$3.0 million for each year of Years 6-10, following the pre-moratorium rate proceeding, be adopted?

No. The proposal should not be adopted. The proposed life of the Company's plan is such that the OPC believes it would be impossible to monitor or track the savings and operations of the Company with any degree of accuracy and without excess. Moreover, Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to make such ratemaking decisions.

- (4) If "yes" to question 3 above, what period of time should be used as a "baseline" for the purpose of measuring future merger savings?

Not applicable.

- (5) Should actual or budgeted amounts be used for purposes of establishing a savings tracking "baseline"?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to establish a baseline. However, if the Commission decides that it does have such authority, actual current regulatory approved costs should be used to establish a savings tracking baseline. However, Public Counsel believes that the further in time that you move away from the period that the actual costs are based upon, the less accurate the savings tracking mechanism becomes.

- (6) If a baseline using actual amounts is adopted, what baseline and what adjustments to the "baseline" are appropriate for this purpose?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to establish a baseline. However, if the Commission decides that it does have such authority, a general rate

case proceeding to establish current actual regulatory costs should be held to determine the baseline. All adjustments approved by the Commission to recognize the appropriate mix of rate base, revenue and expense should be utilized to set the baseline of actual costs.

Robertson Rebuttal, pp. 77-93.

Frozen Capital Structure:

- (1) Should EDE divisional customer rates in Years 6-10, after the pre-moratorium rate proceeding, be calculated, as proposed by the Companies, using the stand-alone EDE capital structure ordered by the Commission in the pre-moratorium rate proceeding?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to decide that it will “freeze” the EDE capital structure for ratemaking purposes, especially at a level that is yet undetermined. Assuming arguendo the Commission believes it possesses such statutory authority, from a regulatory standpoint the Commission should reject Companies’ proposal. Utilizing a “frozen” capital structure would be inappropriate and would not reflect the merged company’s actual cost of service.

Burdette, pp. 3-10, 27-28.

Corporate Allocations:

- (1) Does the Companies’ allocation of escalated corporate overhead costs to the EDE division represent a reasonable assumption as to an escalation rate to be applied to these allocated costs?

The escalation rate is an estimate of cost increases to occur in the future thus, its relevance as to whether is is a reasonable assumption is in the eye of the beholder. It cannot be deemed to be 100% accurate, and neither can it be disproved as totally inaccurate. Only the future holds that actual truth.

- (2) Following the closing of the merger, should Missouri Public Service (MPS) divisional customer rates be calculated using levels of UCU corporate overhead allocated costs that assume the non-inclusion of EDE in the UCU corporate structure?

No. UCU corporate overhead allocated costs should be spread among all operating divisions of the Company based upon allocation factors which are germane to the entire Company. EDE should not be excluded as if it is a totally independent operation that is mutually exclusive from the operation of the parent, UCU. Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to make such ratemaking decisions.

Robertson Rebuttal, pp. 40-41.

MPS Savings Assignment:

- (1) Should no or very little merger savings and costs be reflected in the MPS divisional customer rates after the closing of the merger, as proposed by the Companies?

No. Public Counsel supports Staff's position.

Electric Allocations Agreement:

- (1) How should the energy costs and profits from off-system sales associated with the joint dispatch of MPS and EDE power supply resources be allocated between these two post-merger UCU divisions?

Public Counsel takes no position on this issue at this time.

- (2) Should the Electric Allocations Agreement include the specific calculations for estimating energy cost savings from joint dispatch and increased profits from off-system sales?

Public Counsel takes no position on this issue at this time.

Transaction Costs:

- (1) Should the Companies recover in rates the transaction costs associated with the merger?

No, Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to approve transaction costs. Moreover, the transaction costs should not be allowed recovery in rates. They consist of costs incurred to consummate the purchase thus, they are a portion of the total cost of the transaction which benefited shareholders, and should remain the responsibility of the shareholders of the two Companies.

- (2) If yes to question 1, over what period of time should these costs be amortized into cost of service?

Not applicable.

- (3) If yes to question 1, what portion of transaction costs should be assigned to nonregulated operations?

Not applicable.

Robertson Rebuttal, pp. 73-77.

Costs to Achieve:

- (1) Should the Companies recover in rates the "costs to achieve" associated with executive severance payments?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to approve recovery of "costs to achieve." Moreover, the costs associated with executive severance payments should be reviewed in the context of a general rate case proceeding along with all other employee compensation issues.

- (2) Should the Companies recover in rates the costs of the "paid advisory board"?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to approve recovery of "costs to achieve." Moreover, the costs associated with the proposed paid advisory board should be reviewed in the context of a general rate case proceeding along with all other rate case related issues.

- (3) Should the Companies recover in rates FAS 106 curtailment costs through a ten-year amortization?

Public Counsel takes no position on this issue at this time.

- (4) For those "costs to achieve" that are deemed eligible for rate recovery, how should they be accounted for pending consideration in a future general rate proceeding?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to approve recovery of "costs to achieve." However, if the Commission determines certain costs as possibly eligible for rate recovery, they should be deferred in a regulatory holding account until such time that they can be audited for appropriateness, completeness and accuracy in the context of a general rate case proceeding.

Robertson Rebuttal, pp. 23-24.

Pre-Moratorium Rate Proceeding

- (1) Should various determinations concerning the test year, update and true-up periods, capital structure, ratemaking treatment of merger savings and costs, and other items related to EDE's planned pre-moratorium rate proceeding be made by the Commission in this proceeding?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to preapprove or prejudge ratemaking issues for a future rate case.

- (2) Should the in-service criteria applicable to EDE's planned State Line Combined Cycle Unit be determined by the Commission in this proceeding?

Public Counsel does not believe that the Commission possesses the statutory authority in a merger proceeding pursuant to §393.190 to preapprove or prejudge ratemaking issues for a future rate case.

- (3) If the answer is "yes" to question (2), what in-service criteria should be adopted?

Not applicable.

Burdette Rebuttal, pp. 3-5.

Robertson Rebuttal, pp. 94-97.
Trippensee Rebuttal, pp. 12-18.

Market Power

(1) Will a post-merger UCU possess more horizontal, vertical, or retail market power?

Yes. A post merger UCU will possess more horizontal, vertical, and retail market power. A post merger UCU would become a major regional power supplier, especially when its non-related power facilities and those that would be acquired if the UtiliCorp/SJLP merger is approved, are taken into account. In addition, whereas now, UtiliCorp's horizontal market power related to load pocket situations is limited to the load pockets in its Missouri Public Service service territory, after the merger, UtiliCorp would have horizontal market power in load pockets within EDE service territory (and SJLP's service territory as well). In addition to having vertical market power within it Missouri Public Service service territory, a post merger UCU would have vertical market power within EDE service territory (and possible SJLP's service territory as well). In addition to having retail market power within it Missouri Public Service service territory, a post merger UCU would have retail market power within EDE's service territory (and SJLP's service territory as well).

(2) If the answer to Question 1 is yes, will the additional vertical or retail market power possessed by a post-merger UCU be detrimental to the public interest and will the risk of additional horizontal market power possessed by a post-merger UCU be detrimental to the public interest?

Yes. A post merger UtiliCorp will definitely have enough additional horizontal market power in load pockets and additional vertical and retail market power to cause detriments to the public interest. There is a significant risk that depending on the characteristics of future wholesale and retail markets it will have enough additional market horizontal power in regional power markets to be detrimental to the public interest.

(3) Will the merger allow the Companies to take valuable, limited transmission capacity necessary for other Missouri utilities to maintain deliveries under their purchased power contracts?

There is a risk that this could occur. It depends in part on what, if any, transmission upgrades are made to the SJLP/UtiliCorp/Empire transmission systems.

Kind, pp. 62-77.

Transmission Access and Reliability

(1) Have the Companies conducted and provided adequate studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, to prove that the proposed merger is not detrimental to the public interest?

Public Counsel takes no position on this issue at this time.

- (2) Will the proposed merger provide the Companies the ability to gain unduly preferential priority of access to limited transmission facilities and/or exercise their post-merger transmission access anti-competitively, to the detriment of other customers in the State and therefore to the detriment of the public?

Public Counsel takes no position on this issue at this time.

- (3) Could a post-merger UCU refunctionalize its transmission facilities in anti-competitive ways to the detriment of the public?

Yes.

- (4) Do the Companies being merged adhere to a single, consistent set of standards for designing and operating their transmission facilities and, if not, would not adhering to a single, consistent set of standards for designing and operating their transmission facilities be detrimental if the merger is approved?

Public Counsel takes no position on this issue at this time.

Stranded Costs

- (1) Would ratepayers be harmed if UCU were allowed to include any portion of the acquisition adjustment in its future calculation of stranded costs?

Ratepayers would be harmed to the extent that any costs in excess of the actual costs incurred to provide the services currently being provided are allowed in rates.

Kind Rebuttal, pp. 43-46.

Synergies In Unregulated Operations

- (1) Are some of the synergies (e.g., generation) included in the 10-year merger synergy calculations likely to accrue primarily to shareholders if electric restructuring occurs in Missouri prior to the end of the 10-year period used to calculate the merger synergies?

Yes. If the electric industry in Missouri is restructured prior to the end of the ten year period used by the Joint Applicants to calculate merger synergies, then rate payers will start paying market-based rates instead of cost-based rates for generation service. Once this occurs, shareholders will receive the full benefits of all reductions related to electric supply synergies and consumers will no longer receive any of these benefits. Similarly, the shareholders will benefit from reductions in Administrative and General expenses and other costs that are allocated among the distribution, transmission, and generation functions once restructuring occurs and rates are unbundled into the distribution, transmission, and generation components.

- (2) Will UCU receive additional benefits from the proposed merger that are not reflected in the 10-year merger synergy calculations?

Yes. Merger benefits will persist after the initial ten year period in many of the areas where the Joint Applicants have estimated merger benefits. Merger benefits will also persist after the initial ten year period in many of the areas where the Joint Applicants have not estimated merger benefits such as: non-regulated telephony, internet, cable TV, appliance warranty and repair, and energy conservation and load management services.

Kind Rebuttal, pp. 47-62.

Affiliate Transactions

- (1) Will UCU's affiliate transactions, as a result of the proposed merger, increase in size and scope and thus become more complex and difficult to monitor, while at the same time it will become more important to monitor such transactions to ensure compliance with standards?

Yes, the size, scope, and complexity of UtiliCorp's affiliate transactions will increase if the proposed merger is approved as UtiliCorp pursues its plans to: (1) begin non-regulated telephony and fiber optic operations in Missouri by leveraging the telecommunications assets and investments of EDE and (2) enhance the value of its controlling investment in Quanta Services by utilizing it as a preferred contractor for the regulated distribution network projects that must be performed to provide regulated service to EDE's customers.

Kind Rebuttal, pp. 73-77.

Energy Efficiency

- (1) Will the proposed merger have a detrimental impact on low-income weatherization and therefore on the public?

Public Counsel takes no position on this issue at this time.

- (2) Will the proposed merger have a detrimental impact on other energy efficiency assistance and therefore on the public?

Public Counsel takes no position on this issue at this time.

- (3) Will the proposed merger have a detrimental impact on the use of renewable energy resources and therefore the public?

Public Counsel takes no position on this issue at this time.

EDE Retiree Benefits

Public Counsel takes no position on these issues at this time.

EDE Health Insurance Trust Account Assests

Public Counsel takes no position on this issue at this time.

Labor Protective Provisions

Public Counsel takes no position on these issues at this time.

II. If the adoption of conditions by the Commission cannot in the view of particular parties eliminate in total the situation that the proposed merger is detrimental to the public interest, but regardless of this view of particular parties, the Commission decides to approve the proposed merger, should the Commission adopt any or all of the following conditions, as part of its approval of the Companies' merger?

Stranded Costs Condition

- (1) Should the Staff's proposed condition regarding elimination of the acquisition adjustment from future stranded cost calculations be adopted?

Public Counsel takes no position on this issue at this time.

Pension Funds Condition

- (1) Should the Staff's proposed condition requiring maintaining the pre-merger funded status of EDE's pension fund for calculating FAS 87 pension cost be adopted?

Public Counsel takes no position on this issue at this time.

Access to Book and Records Condition

- (1) Should the OPC's condition that the merged entity be required to allow OPC and the Staff access to its books, records, employees and officers and those of its wholly owned subsidiaries be adopted?

Yes, based on the increased size, scope, and complexity of affiliate transactions that will occur if the proposed merger is approved, the Staff and Public Counsel will need additional assurances that the Staff and OPC will have access to the books, records, employees, and officers of the affiliates of UtiliCorp and its wholly-owned subsidiaries. This access should be provided to all affiliates of UtiliCorp and its wholly-owned subsidiaries where the ownership interest of UtiliCorp or its wholly-owned subsidiaries is 10% or more.

Kind Rebuttal. pp. 7, 14-23.

Affiliate Transactions Condition

- (1) Should the OPC's condition that the merged entity be required to agree to comply with

the Commission's affiliate transaction rules be adopted?

Yes, based on the increased size, scope, and complexity of affiliate transactions that will occur if the proposed merger is approved, the Commission should commit to close scrutiny of UtiliCorp's compliance with the terms of the Commission's Affiliate Transaction Rules.

Kind Rebuttal, pp. 47-59, 73-77.

Income Taxes Condition

- (1) Should the Staff's proposed condition regarding customer protections in the event the merger is treated as a "taxable" transaction be adopted?

Public Counsel supports the position of Staff.

Surveillance Condition

- (1) Should the Staff's proposed conditions regarding continued submission of separate "surveillance" reports for UCU and EDE, following closing of the merger, be adopted?

Public Counsel supports the position of Staff.

Customer Service Indicators Condition

- (1) Should the Staff's proposed conditions regarding measurement, reporting and potential imposition of remedial action concerning certain customer service indicators be adopted?

Public Counsel supports the position of Staff.

Market Power Conditions

- (1) Respecting vertical market power, should the Staff's condition that the Companies be required to commit to join a single regional transmission entity before the October 15, 2000 deadline of FERC Order No. 2000, be adopted?

Yes, the Commission should condition its approval of the merger on this condition as well as the additional vertical market power conditions recommended by OPC.

- (1) Respecting horizontal market power, should the Staff's condition that at the time retail competition becomes lawful in Missouri the Companies be required to agree to submit a study showing what percentage of load throughout their merged service territory can be served from competitive generation sources, be adopted?

Yes, the Commission should condition its approval of the merger on this condition as well as the additional horizontal market power conditions recommended by OPC.

- (2) Respecting horizontal market power, should OPC's condition that, the Companies be required to agree that they will be subject to the same Horizontal Market Power Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Yes, this condition would mitigate the detriment associated with the enhanced horizontal market power that would result from the proposed merger.

- (3) Respecting vertical market power, should OPC's condition that the Companies be required to agree to join a Regional Transmission Organization (RTO) under the same Vertical Market Power Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Yes, this condition would mitigate the detriment associated with the enhanced vertical market power that would result from the proposed merger.

- (4) Respecting retail market power, should OPC's condition that the Companies be required to agree that they will be subject to the same Retail Market Power Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Yes, this condition would mitigate the detriment associated with retail market power that would result from the proposed merger.

- (5) Respecting horizontal, vertical, and retail market power, should OPC's condition that the Companies be required to agree that they will be subject to the same Market Power Legislation Provisions that were approved by the Commission in Case No. EM-97-515 be adopted?

Yes, this condition would mitigate the detriment associated with horizontal, vertical and retail market power that would result from the proposed merger.

- (6) Respecting transmission capacity, should Springfield's proposed conditions regarding Transmission Access and Reliability (which are set forth in detail herein under the heading "Transmission Access and Reliability Conditions") be adopted?

No. Public Counsel is opposed to the Commission deciding that it will adopt all of Springfield's proposed conditions regarding Transmission Access and Reliability. OPC takes no position at this time on some of the "Transmission Access and Reliability Conditions," and are opposed to some of the "Transmission Access and Reliability Conditions." Public Counsel's positions on each of Springfield's proposed conditions regarding Transmission Access and Reliability are set forth

under the heading "Transmission Access and Reliability Conditions."

Kind Rebuttal, pp. 62-77.

Transmission Access and Reliability Conditions

- (1) (a) Should the Commission order the Joint Applicants to conduct production cost, load flow and stability studies of the impact of the proposed merger upon transmission facilities within, and interconnecting with, the State of Missouri, and upon all providers of electric service in the State, prior to approval of the merger and if so, what should such studies contain? (b) Should the Joint Applicants be ordered to provide these studies in hard copy and electronic form to the other parties, and should the Commission keep this case open until such time as the studies have been completed and all parties have been allowed sufficient time to review/analyze and file comments in this case on such studies? (c) Should the Joint Applicants be required to construct and/or upgrade, at their expense, transmission facilities necessary to insure that their integrated operation will not adversely impact others? (d) If the answer to (c) is yes, what transmission facilities?

Public Counsel takes no position at this time on (a), (b), (c), and (d).

- (2) Should the Commission impose conditions on the merger such that:
- The Joint Applicants be required by the Commission to commit that with respect to any and all generating resources associated with any one of their existing four control areas (including purchased generating resources) serving load in any other control area of the merging companies, the merging companies should waive or not assert: (i) native load priority on scheduling and curtailing non-firm network transmission service; (ii) the native load preference arguably accorded to bundled retail loads over wholesale loads under the decision in Northern States Power Co. v. FERC, 176 F.3d 1090 (8th Cir. 1999); and (iii) use of any native load priority that will enable any one of the merging companies to import power through constrained interfaces so as to free up its local generating resources for off-system sales?

No.

- The Joint Applicants not be allowed to combine any or all of their existing control areas without first submitting their plans for such combinations to peer group review and approval by the SPP ISO/RTO and the affected regional reliability councils?

Public Counsel takes no position on this issue at this time.

- The merged companies be required to schedule all power flows and/or reserve transmission capacity on the relevant OASIS for purposes of carrying out any internal dispatch between what are now four geographically isolated pockets of load and generation in four separate control areas of the merging companies, to implement real-time monitoring of intra-company flows associated with internal dispatch, to report continuously the amount of such flows on its OASIS and to make all reasonable efforts to limit internal dispatch to levels at or below the transmission capacity reserved for purposes of carrying it out?

Public Counsel takes no position on this issue at this time.

- If the burdens on Springfield attributable to internal dispatch of the Joint Applicants turn out to be substantial (i.e., a substantial increase in curtailments of Springfield's firm schedules from Montrose), the merged company be required to reimburse Springfield for the incremental costs to Springfield of re-dispatching Springfield's generating resources that are attributable to the post-merger integrated operations of the Joint Applicants' separate systems?

No.

- The merged company be required to put all of its transmission facilities in Missouri and Kansas under the control of the SPP ISO/RTO in a single zone under the SPP transmission tariff and that the merged company join - and maintain membership in - the SPP ISO/RTO and be required to file an integrated open access transmission tariff ("OATT") and an integrated transmission rate for their four control areas in Missouri and Kansas?

No. The merged company should be allowed to choose between the SPP ISO/RTO and the MISO ISO/RTO in accordance with the timetable recommended by Staff in its vertical market power condition and in conformance with the vertical market power conditions recommended by OPC.

- UCU be required to (i) not set aside transmission capacity for Capacity Benefit Margins (CBM) and Transmission Reserve Margins (TRM) and (ii) to waive any future claims for CBM and TRM?

No.

(3) Should UCU be required to not seek refunctionalization of any currently categorized transmission lines of the merging companies that operate at or above 69 kV?

Yes.

- (4) Should the Joint Applicants be required (i) to establish and implement a single standard for transmission system design and operation for the entirety of the merged company and (ii) to comply with the Southwest Power Pool Criteria?

Public Counsel takes no position at this time.

Load Research Condition

Should the Staff's proposed conditions regarding production of load research data, following closing of the merger, be adopted?

Public Counsel takes no position on this issue at this time.

Fuel Energy Cost Information Condition

- (1) Should the Staff's proposed condition regarding the continued provision of separate MPS and EDE fuel and energy cost information following closing of the merger be adopted?

Public Counsel takes no position on this issue at this time.

Energy Conditions

- (1) Should the Commission approve DNR's proposed condition that UCU must enter into a partnership with MDNR and other interested parties to market and leverage funds for the development of energy efficiency programs?

Public Counsel takes no position on this issue at this time.

- (2) Should the Commission approve DNR's proposed condition that UCU must develop or retain low-income service packages to meet customer needs, reduce energy costs and provide a return to UCU?

Public Counsel takes no position on this issue at this time.

- (3) Should the Commission approve DNR's proposed condition that UCU must offer additional renewable energy options to Missouri customers?

Public Counsel takes no position on this issue at this time.

- (4) Should the Commission approve DNR's proposed condition that UCU must target outreach to customers that are income eligible and encourage them to take advantage of the opportunity to reduce energy consumption and to improve home affordability?

Public Counsel supports the position of Staff.

- (5) Should the Commission approve DNR's proposed condition that UCU must amend the cooperative agreement between UCU and Kansas City, Missouri to permit averaging unit cost within the agreement to maximize the opportunity to assist customers?

Public Counsel supports the position of Staff.

- (6) Should the Commission approve DNR's proposed condition that UCU must eliminate tying the dollar amount to specific measures to maximize the energy conservation measures installed in each home? Should the Commission approve DNR's proposed condition that any energy efficient measure that is deemed cost-effective as a result of computer analysis, as stated in the agreement between UtiliCorp and Kansas City, Missouri, shall be permitted?

Public Counsel supports the position of Staff.

- (7) Should the Commission approve DNR's proposed condition that UCU must permit energy-efficiency assistance to all eligible households? Should the Commission approve DNR's proposed condition that UCU must allow funds to be spent on non-electric appliances?

Public Counsel takes no position on this issue at this time.

- (8) Should the Commission approve DNR's proposed condition that UCU must implement a 25-site Benefit Outreach and Screening Software (BOSS) pilot project, and must expand the program, as appropriate, if found to successfully deliver benefits to low-income customers?

Public Counsel takes no position on this issue at this time.

- (9) Should the Commission approve DNR's proposed condition that UCU must implement a base load and space heating electric energy efficiency program directed toward high use payment-troubled low-income customers?

Public Counsel supports the position of Staff.

- (10) Should the Commission approve DNR's proposed condition that UCU must implement a pilot solar energy program directed toward high use low-income customers?

Public Counsel supports the position of Staff.

- (11) Should the Commission approve DNR's proposed condition that UCU must implement a periodic survey process through which the merged company will take pro-active efforts to identify which of its payment-troubled customers represent low-income households?

Public Counsel supports the position of Staff.

- (12) Should the Commission approve DNR's proposed condition that UCU must implement an Outcome-based Performance Reporting System (OPRS) through which the customer service outcomes to low-income customers can be systematically tracked over time?

Public Counsel takes no position on this issue at this time.

OPC Regulatory Plan Condition

- (1) If the Commission approves the proposed merger, should OPC's regulatory plan be approved?

Yes. Public Counsel's regulatory plan requires that the merged entity have its rates set based upon traditional rate of return regulation through a case filed one year after the final determination of both the proposed merger and the merger proposed between SJLP and UtiliCorp United.

Kind Rebuttal, pp. 28-30.

Trippensee, pp. 4-12.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

John B. Coffman

(#36591)

Deputy Public Counsel

P. O. Box 7800

Jefferson City, MO 65102

(573) 751-5565

(573) 751-5562 FAX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 23rd day of August, 2000:

Paul A. Boudreau
Brydon, Swearingen & England
P.O. Box 456
Jefferson City, MO 65102

William J. Niehoff
Union Electric Company
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166

Stuart W. Conrad
Finnegan, Conrad & Peterson
1209 Penntower Office Bldg.
3100 Broadway
Kansas City, MO 64111

Shelley A. Woods
Assistant Attorney General
P.O. Box 176
Jefferson City, MO 65102

Steven Dottheim
Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Jeffery A. Keevil
Stewart & Keevil
1001 Cherry St., Suite 302
Columbia, MO 65201

William A. Jolley
Jolley, Walsh, Hurley & Raisher
204 W. Linwood Blvd.
Kansas City, MO 64111

James B. Deutsch
Blitz, Bardgett, & Deutsch, L.C.
308 East High Street, Suite 301
Jefferson City, MO 65101


